

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION

BEREAN BAPTIST CHURCH,
RETURN AMERICA, INC.,
DR. RONNIE BAITY, and
PEOPLE'S BAPTIST CHURCH, INC.,

CIVIL ACTION NO.

Plaintiffs,

v.

GOVERNOR ROY COOPER, in his
official capacity,

Defendant,

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs Berean Baptist Church (“Berean”), a North Carolina nonprofit corporation; Return America, Inc. (“Return America”), a North Carolina nonprofit corporation; Dr. Ronnie Baity, Pastor of the Church and President of Return America (“Dr. Baity”); and People’s Baptist Church, Inc., (“People’s”), a North Carolina nonprofit corporation, for their Complaint for Declaratory and Injunctive Relief against Defendant Roy Cooper in his official capacity as North Carolina Governor, allege as follows:

EXIGENCIES REQUIRING TEMPORARY RESTRAINING ORDER

1. The State of North Carolina, as is the entire world, is suffering under the COVID-19 virus pandemic, to which Defendant North Carolina Governor Roy Cooper (“Gov. Cooper”) has responded with Executive Order No. 116 (“EO 116”) declaring a State of Emergency for North Carolina and thereafter with a series of Executive Orders

attempting to prevent the spread of the virus within the State. (EO 116 is attached as **Exhibit 1**).

2. Plaintiffs bring this suit to challenge Gov. Cooper's Executive Order Nos. 117, 120, 121, 135, and 138 issued March 14, March 27, March 23, April 23, and May 5, 2020, respectively, as being unconstitutional both facially and as applied to Plaintiffs, because they treat religious gatherings less favorably than similar secular gatherings, virtually banning religious assembly, are not narrowly tailored, and do not permit less restrictive means to achieve the government's interest without burdening Plaintiffs' rights as guaranteed by the U.S. Constitution's First Amendment. ("EO 117," "EO 120," "EO 121," "EO 135" "EO 138, and collectively as "Orders"). The Orders are attached as **Exhibits 2, Exhibit 3, Exhibit 4, Exhibit 5, and Exhibit 6**).

3. Governor Cooper's Orders have been interpreted, applied, and enforced by his Office and local law enforcement authorities as prohibiting indoor gatherings for religious worship by more than 10 people.

4. The Orders are not neutral laws of general applicability because they target Constitutionally protected activity, significantly burdening the Plaintiffs' right to freedom of religion and assembly, establishing an orthodox form of religious exercise approved by the State, all the while providing broad exemptions for many other gatherings of more than 10 people that are not constitutionally protected.

5. Absent emergency relief from this Court, Berean, People's, Return America, and Dr. Baity, and all members and/or attendees of Plaintiffs' entities will suffer immediate and irreparable injury from the threat of civil and criminal prosecution for the mere act of gathering for the free exercise of religion and in assembling for worship. If Plaintiffs do

not subscribe to what Governor Cooper has established as orthodox in a worship service, they risk criminal penalties, including imprisonment.

JURISDICTION AND VENUE

6. This civil rights action raises federal questions under the United States Constitution, specifically the First and Fourteenth Amendments, and is brought pursuant to 42 U.S.C. § 1983.

7. This Court has jurisdiction over Plaintiffs' federal claims under U.S. Const., Art. III., Sec. 2, and under 28 U.S.C. § 1331 and 1343.

8. This Court has authority to grant the requested declaratory relief under 28 U.S.C. §§ 2201 and 2202, the requested injunctive relief under 28 U.S.C. § 1343, and reasonable attorney fees and costs under 42 U.S.C. § 1988.

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district, a Plaintiff resides in this district, and all Plaintiffs reside in North Carolina.

PLAINTIFFS

10. Plaintiff Berean Baptist Church is a non-profit church incorporated under the laws of North Carolina and organized exclusively for religious purposes within the meaning of § 501(c)(3) of the Internal Revenue Code. Berean Baptist Church is located in Winston Salem, North Carolina.

11. Plaintiff Return America, Inc., is a non-profit corporation incorporated under the laws of North Carolina and organized for religious and educational purposes

within the meaning of § 501(c)(3) of the Internal Revenue Code. Return America is located in Winston Salem, North Carolina.

12. Plaintiff Dr. Ronnie Baity serves as Pastor of Berean Baptist and President of Return America.

13. Plaintiff People's Baptist Church is a non-profit church incorporated under the laws of North Carolina and organized exclusively for religious purposes within the meaning of § 501(c)(3) of the Internal Revenue Code. People's Baptist Church is located in Greenville, North Carolina.

DEFENDANT

14. Defendant Roy Cooper in his official capacity as Governor of the State of North Carolina ("Governor Cooper"), is responsible for enacting and enforcing the COVID-19 Executive Order at issue in this litigation and is sued in his official capacity only.

FACTUAL BACKGROUND

Plaintiffs' Religious Gatherings

15. Plaintiff Berean Baptist Church has been operating in Winston-Salem, North Carolina, since November 1980.

16. Multiple times every week since that date, for almost 40 years, Berean has assembled its members and attendees in its church buildings in gatherings of more than 10 people to engage in religious worship as a body; it has been unable to do so since Defendant Gov. Cooper issued his Orders.

17. Dr. Ronnie Baity is the founder and Pastor of Berean, the President of Plaintiff Return America, and serves as a chaplain for the Winston-Salem Police Department.

18. Berean and its members, including Dr. Baity, who together make up Berean, believe that a physical assembly in one place on the Lord's day, for mid-week services, in revivals, and for other special meetings is God-commanded part of their worship and that failure to assemble is a sin as violation of God's commands as they interpret the *Holy Bible* in such verses as Hebrews 10:25, Romans 10:17, Acts 2:4 and 38; Ephesians 5:25-26.

19. Church attendance is of such ecclesiastical importance to Berean that under the Church's Bylaws, the failure of a member to attend at least one regular worship service in two months subjects that member's membership to automatic termination by Berean.

20. Berean is a large congregation, normally having 300 in attendance at its weekly Sunday morning worship assembly.

21. Return America, Inc., is a nonprofit organization that is comprised of a network of churches and individuals whose purpose it is to educate, motivate, and mobilize citizens in a united effort in promoting Judeo-Christian values; to educate and influence government in the principles upon which North Carolina and the USA were founded: the sanctity of life and protection of the unborn, the sanctity of marriage and family, Biblical morality, religious liberty, and the security of America.

22. Return America regularly conducts rallies, conferences, and other gatherings with more than 10 people; it has been prohibited from doing so since Governor Cooper issued his Orders.

23. Return America has over 130 supporting North Carolina churches and several hundred individuals within its network, with some 12,000 individuals attending Return America rallies.

24. Plaintiff People's Baptist Church has been operating in Greenville, North Carolina for 58 years.

25. Multiple times every week since for those 58 years, People's has assembled its members and attendees in its church buildings in gatherings of more than 10 people to engage in religious worship as a body; it has been unable to do so since Defendant Gov. Cooper issued his Orders.

26. People's and its members believe that a physical assembly in one place on the Lord's day, for mid-week services, in revivals, and for other special meetings is God-commanded part of their worship and that failure to assemble is a sin as violation of God's commands as they interpret the *Holy Bible* in such verses as Hebrews 10:25, Romans 10:17, Acts 2:4 and 38; Ephesians 5:25-26.

27. Church attendance is of such ecclesiastical importance to People's that under the Church's Bylaws, a qualification for membership is being engaged in regular church attendance and if a member fails to attend for six months may automatically be placed on the inactive list, losing their voice in church business affairs.

28. People's is a large congregation, normally having 450 people at its Sunday morning worship service.

29. Plaintiffs have peaceably complied with the Orders that have limited their religious worship gatherings to 10 people or forced them to hold much less acceptable electronic meetings in furtherance of their strong interest in protecting the congregants of

the Churches, respect for and obedience to God’s command to obey authority, and assurances from Defendant Gov. Cooper that the restrictive measures imposed by the Orders would be very temporary.

30. Plaintiffs are now compelled to challenge the Orders in light of the glaring disparate, unequal, discriminatory, unfavored, hostile, and most restrictive treatment of Plaintiffs’ religious and other First Amendment gatherings over other, secular, gatherings; their congregants’ need comfort from their church after they have been forced to remain in their homes for weeks and weeks; the ever-lengthening infringement by the Orders upon their God-commanded duty to corporately assemble for worship in their houses of worship; and their concern over the State’s interference in the very form and method of their most important of their ecclesiastical functions—religious worship.

The Governor’s Executive Orders

31. On March 10, 2020, Governor Cooper issued EO 116, declaring a State of Emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19) for the State of North Carolina based on the public health emergency posed by COVID-19. The State of North Carolina remains under the State of Emergency. (Exhibit 1).

32. On March 14, 2020, Gov. Cooper EO 117 prohibiting for thirty days “mass gatherings” of more than 100 people in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, theater, or any other confined indoor or outdoor space.” (Exhibit 2).

33. Executive Order 117 excepted from the mass gathering prohibition numerous categories of gatherings, including “normal operations at airports, bus and train stations,

medical facilities, libraries, shopping malls and centers, or other spaces where more than one hundred (100) persons are gathered. It also does not include office environments, restaurants, factories, grocery stores or other retail establishments.” The Order authorized prosecution of violations of EO 117 as Class 2 misdemeanors. (*Id.*)

34. In further response to the COVID-19 emergency, Gov. Cooper issued EO 120 on March 23, to be in effect for 30 days, reducing the maximum number to 50 persons which could be lawfully gathered in a mass gathering, again excluding from the mass gathering definition “normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers,” as well as “office environments, factories, grocery stores, and child care facilities,” closing entertainment facilities and personal care and grooming facilities, and again authorizing the criminal prosecution of violations. (Exhibit 3).

35. By his March 27, 2020, EO 121, Gov. Cooper ordered all individuals in North Carolina to stay at home and practice social distancing as much as reasonably possible, and permitted individuals to leave their homes “only for Essential Activities, Essential Governmental operations, or to participate in or access COVID-19 Essential Business and Operations” as defined in EO 121. Section 2 of EO 121 listed thirty (30) “COVID-19 Essential Businesses and Operations.” Included as an essential business or operation was:

10. Religious entities. Religious facilities, entities, groups, gathering, including funerals. Also, services, counseling, pastoral care, and other activities provided by religious organizations to the members of their faith community. *All of these functions are subject to the limitations on events or convenings in Section 3 of this Executive Order.* (Emphasis added).

(Exhibit 4).

36. “Religious entities” was one of only two categories of the 30 Essential Businesses and Operations that were subject to EO 121’s Section 3 requirements. (*Id.*)

37. Section 3 of EO 121: first, rescinded the definitions from earlier COVID-19 Executive Orders that had defined “mass gatherings” as more than 100 people and then more than 50 people; second, newly defined “mass gathering” as “any event or convening that brings together more than ten (10) persons in a single room or single space at the same time; third, excluded from the ten-person limit “normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers” or any “COVID-19 Essential Business or Operation.” (*Id.*)

38. The only two COVID-19 Essential Business or Operation entities that were not excluded by EO 121 from the Section 3 limits were funerals, which were permitted up to 50 people, and religious entities which were still subjected to the low 10-person limit. (*Id.*, at Section 2(C)(10) and 2(C)(29)).

39. The first category of EO 121’s list of COVID-19 Essential Business or Operation was “Businesses that meet Social Distancing Requirements,” which had no limit placed on the number of employees and customers allowed to gather except at the point of sale or purchase. (*Id.*, at Section 2(C)(10) and 2(C)(1)).

40. It appeared that even if Plaintiffs religious entities complied with social distancing requirements, they would still be limited to no more than 10 people.

41. On April 23, 2020, Gov. Cooper issued EO 135, extending the mass gathering prohibition of EO 120 and all of EO 121 until May 8, 2020. (Exhibit 5).

42. On May 5, 2020, Gov. Cooper issued EO 138 in which he began lifting the stay at home order by permitting individuals to leave their homes beginning May 8, 2020, only for “Allowable Activities” as defined by the Order. Otherwise, individuals were ordered to continue to stay at home. (Exhibit 6).

43. Among EO 138’s allowable activities are “[t]o worship or exercise First Amendment rights.” (*Id.*, at Section 2(C)(7)).

44. Mass gatherings of more than 10 people are still prohibited by EO 138.

45. Executive Order 138’s definition of “mass gathering” now **excludes** “gatherings for . . . worship, or exercise of First Amendment rights” (*Id.*, at Section 6(A)), which would appear to exclude gathering for worship from the 10-person limit in “any confined indoor or outdoor space required of a “mass gathering.”

46. However, what Defendant giveth, Defendant taketh away, at least “for worship, or exercise of First Amendment rights”, because EO 138 then requires at least those two forms of gatherings with more than 10 people to “take place outdoors unless impossible” (*Id.*, at Section 6(A)(C)).

47. Funerals are still considered a “mass gathering” in EO 138, but are permitted to gather up to 50 people (*Id.*, at Section 6(D)).

48. Executive Order 138 also excludes from the definition of “mass gathering” events in which “the participants all stay within their cars, such as at a drive-in movie theater.” (*Id.*, at Section 6(E)).

49. The Director of Legislative Affairs for the Office of Governor Roy Cooper notified Senators on May 11, 2020, that that office “has issued guidance to assist congregants and public officials regarding” “how religious worship services may be safely

convened. (May 11, 2020, Letter from the Office of the Governor to Senators with attached “EO 138 Phase One -- Guidance for Religious Services and Mass Gathering Restrictions” is attached as **Exhibit 7**). (“Guidance”).

50. The tortured interpretation by the Guidance of EO 138 as it applies to religious services--not a mass gathering under EO 138--is that “[i]ndoor worship services and weddings are allowed for gatherings of ten people or fewer in the same confined space.” (*Id.*).

51. The Guidance further interprets EO 138 to mean that churches may only assemble more than 10 people if they meet outdoors or indoors if it is “impossible” to meet outdoors, **such as when “particular religious beliefs dictate that some or all of a religious service must be held indoors and that more than ten persons must be in attendance.”**

52. Defendant’s Office’s interpretation of EO 138 has made the right to gather inside for religious worship **dependent upon the religious beliefs of the gathering participant**, not upon age, or health, or criminal background, or weight, but on holding an approved religious belief; if the participant does not hold the State’s established religious belief, he must gather for worship outside or inside with nine people or less.

53. The Guidance does not appear to interpret EO 138 to even allow worship services of more than 10 people to be held indoors even for Hurricane Florence.

54. By issuing the prohibitions and regulations in his Orders, Defendant Gov. Cooper exercised his legislative powers.

55. By ordering and directing enforcement of the Orders, Defendant Cooper has used his executive power to enforce, or promised to enforce, those same prohibitions and regulations.

COUNT 1
(U.S. Const., First and Fourteenth Amendment – Free Exercise)

56. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 55 of this Complaint as though fully set forth herein.

57. The First Amendment of the United States Constitution provides that “Congress shall make no law... prohibiting the free exercise [of religion].” Under the Fourteenth Amendment, this prohibits every level of state and local government from making a law prohibiting the free exercise of religion.

58. On their face or as applied, the Orders violate the First Amendment Free Exercise and Assembly Clauses because they:

- a. constitute overbroad restrictions on the Plaintiffs’ rights to assemble to exercise their religious belief that they must worship together as a religious body as commanded by Scripture;
- b. place more stringent restrictions on the Plaintiffs’ gatherings than they place on a wide range of secular businesses such airports, bus and train stations, medical facilities, libraries, shopping malls, shopping centers, office environments, restaurants, factories, or grocery stores;

- c. allow a large number of secular gatherings of more than 10 people, while prohibiting religious Plaintiffs' gatherings of more than 10 people; and
- d. are not narrowly tailored, or the least restrictive means to accomplish a compelling governmental interest.

59. On their face or as applied, the Orders exempt from their ban on gatherings a large number of secular businesses and activities that are not protected by the Constitution, while not providing a sufficiently equivalent exemption for Plaintiffs' First Amendment-protected activity.

60. On their face or as applied, the Orders impose a substantial burden upon Plaintiffs' free exercise of religion, subjecting them to criminal sanctions for exercising their religious belief that they are commanded by God to gather their flocks together for religious worship in the building provided by God and long-dedicated to religious worship.

61. On their face or as applied, the Orders are not neutral, purporting to treat Plaintiffs' religious activity differently and less favorably than other categories of activity, including gatherings as defined by the Orders.

62. On their face or as applied the Orders are not generally applicable, prohibiting the Plaintiffs' congregants and members from gathering for religious services while allowing gatherings of unlimited numbers for substantially similar secular conduct.

COUNT 2
(U.S. Const., First and Fourteenth Amendment – Establishment of Religion)

63. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 55 of this Complaint as though fully set forth herein.

64. The prohibition by the Orders of more than 10 people in a faith-based gathering purport to establish religion by dictating under penalties of criminal sanctions that Plaintiffs may only worship together in groups of 10 or fewer people or worship online, thereby establishing a state-approved orthodoxy for religious worship.

65. On their face or as applied, the Orders:

- a. permit the State to display impermissible hostility towards the Plaintiffs' gatherings that it does not display to other, secular gatherings;
- b. show impermissible favoritism towards secular gatherings over the Plaintiffs' religious gatherings;
- c. show impermissible favoritism towards religious worship gathering participants which hold state-approved religious beliefs over the Plaintiffs' religious gatherings;
- d. excessively entangle the State with the manner, style, form, practices, or sacraments of Plaintiffs' religious worship; and
- e. establish an acceptable method for the Plaintiffs' religious exercise and worship, placing a numerical limitation on the scope of how the Plaintiffs' religious exercise and worship may occur, and approving only State-mandated forms of worship;

COUNT 3

(U.S. Const., First and Fourteenth Amendment – Right to Assemble)

66. Plaintiffs hereby allege and incorporate by reference each and every allegation contained in paragraph 1 through 55 of this Complaint as though fully set forth herein.

67. The Orders' ban on the Plaintiffs' in-person religious worship services of more than 10 people while permitting larger gatherings for dozens of other, secular, activities does not serve any legitimate, rational, substantial, or compelling governmental interest.

68. As demonstrated by its many exemptions to the 10-person limit on gatherings, the State has alternative, less restrictive means to achieve any interest it may have in the Orders numerical limit upon the Plaintiffs' gatherings.

69. In the absence of declaratory and injunctive relief, the Plaintiffs' right to freedom of religion and right to peaceably assemble will be irreparably harmed.

70. The Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request the Court to enter judgment against Defendant as follows:

1. Granting the Plaintiffs' concurrently filed motion for a temporary restraining order;

2. Declaring enforcement of the Orders against Plaintiffs to be unlawful and/or a violation of the Plaintiffs' rights;

3. Granting an order preliminarily, and thereafter, permanently enjoining Defendant and Defendant's officers, agents, affiliates, servants, successors, employees, and

any other persons who are in active concert or participation with any of the foregoing persons from enforcing the Orders against Plaintiffs;

4. Entry of judgment for Plaintiffs and against Defendant for deprivation of rights, including an award of damages in an amount to be determined by the Court;

5. Awarding Plaintiffs' costs and attorneys' fees as authorized by Fed. R. Civ. P. 54, 42 U.S.C. § 1988, and any other applicable law.

6. Awarding such further relief as the Court deems just and proper.

Date: May 14, 2020

Respectfully submitted,

BEREAN BAPTIST CHURCH
RETURN AMERICA, INC.
DR. RONNIE BAITY
PEOPLE'S BAPTIST CHURCH, INC

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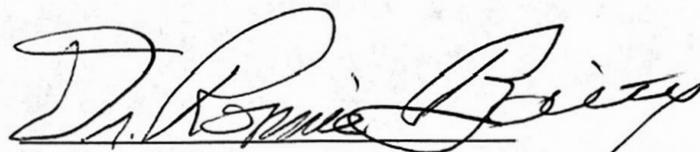
**To appear pursuant to Local Rule 83.1*

Counsel for Plaintiffs

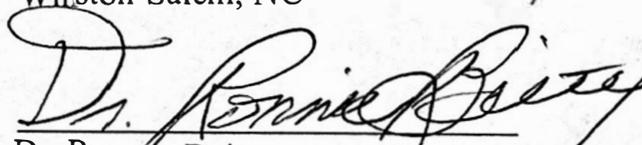
VERIFICATION

I declare under penalty of perjury that the foregoing Verified Complaint for Declaratory Judgment and Injunctive Relief has been examined by me and that the factual allegations therein are true to the best of my information, knowledge, and belief.

Executed on this 13th day of May 2020.



Dr. Ronnie Baity
Pastor, Berean Baptist Church
Winston-Salem, NC



Dr. Ronnie Baity
President, Return America, Inc.
Winston-Salem, NC